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**OFFICE OF PETITIONS**

In re Application of :  
Douwe J. Runia, et al. :  
Application No. 10/712,924 : ON PETITION  
Filed: November 13, 2003 :  
Attorney Docket No. TS-6413USA. :

This is a decision on the petition styled "Petition Under Rule 1.78(a)(3)," filed October 28, 2004, which is being treated as a petition under 37 CFR 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of prior-filed provisional Application No. 60/426,648, filed November 15, 2002.

The petition is **DISMISSED AS MOOT.**

Petitioner has submitted on October 28, 2004, an amendment to add a new paragraph to the specification immediately following the title to include a reference to prior-filed provisional Application No. 60/426,648, filed November 15, 2002.

The instant pending nonprovisional application was filed on November 13, 2003, and was pending at the time of filing of the instant petition. While a reference to the prior-filed provisional application was not included in an ADS or in the first sentence of the specification following the title, reference nevertheless was made in the transmittal letter and the declaration filed with the above-identified application.

The current procedure where a claim for priority under 37 CFR 1.78(a)(6) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for

publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR 1.78(a)(5). However, on the other hand, if the USPTO does not note the claim for priority to the provisional application in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR 1.78(a)(6).<sup>1</sup> In the instant case, the Office noted the claim for priority of provisional Application No. 60/426,648 in the transmittal letter or the declaration filed with the application, as shown by its inclusion on the filing receipt.

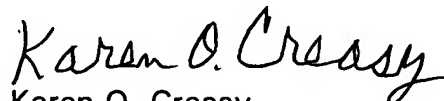
In view of this decision, petitioner is entitled to a refund of the \$130 fee collected with this petition. Any request for refund must include a copy of this decision and be mailed to Mail Stop 16, Director of the U.S. Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450 or faxed to the Customer Service Help Desk at (703) 308-5077.

Any questions concerning this decision on petition may be directed to Sherry Brinkley at (571) 272-3204. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center AU 3632 for consideration by the examiner of the claim under 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(6) for the benefit of prior-filed provisional Application No. 60/426,648, filed on November 15, 2002.



Sherry D. Brinkley  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy



Karen O. Creasy  
Petitions Examiner  
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<sup>1</sup> Note 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.